

2017
National
Seminar

§ 2K2.1 - Unlawful Receipt/Possession/Transportation of Firearms or Ammunition
§2D1.1 - Unlawful Manufacturing, Importing, Exporting, or Trafficking

Selected Case Law Related to Firearms and Drug Trafficking Offenses.

§2K2.1(b)(5) Trafficking of Firearms:

Applying Enhancement

U.S. v. Taylor, 845 F.3d 458 (1st Cir. 2017) (affirming enhancement, finding that the defendant knew or had reason to believe that the person he transferred the sawed-off shotgun to would use the weapon illegally based on the following factors: the sale took place in a private home, not a gun store; the transaction was made in cash; the gun sold was a sawed-off shotgun, which is illegal to possess in almost all situations; the defendant knew the buyer was going to resell the weapons; and, the buyer told the defendant during one of their prior gun sales that he was going to remove the serial number).

U.S. v. Torres, 644 F. App'x 663 (6th Cir. 2016) (unpublished) (enhancement applied because the defendant knew about or had reason to believe the purchasers planned to use the firearms for an unlawful purpose, based on the clandestine nature of the dealings and comments by the undercover team, the fact that the firearm was concealed in a plastic bag, and defendant's statement that the revolver would not leave casings that could be traced to an owner).

U.S. v. Fields, 608 F. App'x 806 (11th Cir. 2015) (unpublished) (enhancement can apply to a defendant who sells a gun to an undercover officer if the defendant believes that the guns will be transferred to a convicted felon). *See also U.S. v. Henry*, 819 F.3d 856 (6th Cir. 2016)).

Rejecting Enhancement

U.S. v. Brewington, --F. App'x--, 2017 WL 1363884 (4th Cir. 2017) (unpublished) (evidence before the district court was insufficient to demonstrate that the defendant knew or had reason to believe the firearms would be possessed unlawfully or that the recipient intended to use or dispose of them unlawfully).

U.S. v. Henry, 819 F.3d 856 (6th Cir. 2016) (court erroneously applied enhancement because the defendant did not sell two guns to one individual, but rather sold one gun each to two people. Sixth Circuit held that the guideline requires the defendant to sell multiple firearms to a single individual).

U.S. v. Johns, 732 F.3d 736 (7th Cir. 2013) (holding it was impermissible double counting to apply both the trafficking enhancement and the enhancement for use of a firearm in connection with another felony offense).

U.S. v. Arechiga-Mendoza, 566 F. App'x 713 (10th Cir. 2014) (unpublished) (enhancement for trafficking was not supported by the facts where the district court failed to make a finding about the defendant's knowledge of the recipients' intentions).

§2K2.1(b)(6): Possessing firearm in connection with another felony or transferring firearm with knowledge or reason to believe it would be possessed in connection with another felony

Applying Enhancement

U.S. v. Posey, 644 F. App'x 253 (4th Cir. 2016) (unpublished) (finding that the firearm had the potential to facilitate the offense of promoting prostitution because the weapon would have encouraged the payment of money owed and would have provided protection to Posey).

U.S. v. Pawlak, 822 F.3d 902 (6th Cir. 2016) (defendant had reason to believe that he was transferring a firearm to a person whose possession would be unlawful because of: the surreptitious nature of the sales (wrapping firearms in a blanket or paper bag, conducting transactions in the privacy of Pawlak's bedroom, and refusing to count the money outside); the "quantity and quality" of the firearms (selling six semi-automatic guns with ammunition to the same buyer on four occasions within 60 days); and the price (double the market value). Additionally, the undercover officer told Pawlak that he left his "truck running because, uh, in case something goes wrong I have to dash for it," implying that he was prohibited from buying the firearm.).

U.S. v. Henry, 819 F.3d 856 (6th Cir. 2016) (affirming enhancement because the joint sale of drugs and firearms has the potential to make a drug transaction easier—thus facilitating it).



§ 2K2.1 - Unlawful Receipt/Possession/Transportation of Firearms or Ammunition

§2D1.1 - Unlawful Manufacturing, Importing, Exporting, or Trafficking

U.S. v. Johnson, 846 F.3d 1249 (8th Cir. 2017) (affirming enhancement because the district court did not rely solely “on a temporal and spatial nexus between the drugs and firearm.” There was significant evidence that the firearm facilitated or had the potential to facilitate the possession with intent to distribute of heroin).

U.S. v. Parrow, 844 F.3d 801 (8th Cir. 2016) (affirming enhancement when the other felony offense was carrying a concealed firearm, which does not fall under the exception of “firearm possessions” offenses).

U.S. v. Chadwell, 798 F.3d 910 (9th Cir. 2015) (enhancement applied based on following facts: gun was found near console of the car from which defendant sold drugs; defendant was under a restraining order for threats of violence; and defendant made every effort to keep police from getting into the car after a traffic stop).

United States v. Tobanche, 643 Fed. Appx. 781 (10th Cir. 2016) (unpublished) (applying the enhancement when drugs and guns were found the defendant’s car).

Rejecting Enhancement

U.S. v. Young, 811 F.3d 592 (2d Cir. 2016) (when a defendant receives a sentencing enhancement for “trafficking” in firearms under § 2K2.1(b)(5), Application Note 13(D) prohibits imposition of an enhancement under § 2K2.1(b)(6)(B) based on the defendant’s transfer of a firearm with reason to believe it will be used in another felony offense).

U.S. v. Velasquez, 825 F.3d 257 (5th Cir. 2016) (court should not have applied both §2K2.1(b)(5) and (b)(6) because the felony offense forming the basis of its application was the same trafficking offense used to apply the in connection with enhancement and was thus double counting).

U.S. v. Pimpton, 589 Fed. Appx 692 (5th Cir. 2015) (the mere fact that a weapon was found in close proximity to body armor did not mean that the weapon “facilitated” the possession of the body armor).

U.S. v. Gates, 845 F.3d 310 (7th Cir. 2017) (receiving a firearm in exchange for drugs does not support the enhancement as the firearm did not facilitate the sale).

U.S. v. Clinton, 825 F.3d 809 (7th Cir. 2016) (“It is the close proximity that allows the court to find such a connection without any further evidence—the proximity alone provides the evidence that the two are connected. If that ‘close proximity’ is lacking, then the connection may still be established, but it must be determined through evidence of such a connection.”).

U.S. v. Arthurs, 647 F. App’x 846 (10th Cir. 2016) (). rejecting the enhancement because the underlying offense, unlawful possession of antidepressants, was not a felony

§2D1.1(b)(12) Maintaining a premises for purposes of manufacturing or distributing a controlled substance

U.S. v. Carter, 834 F.3d 259 (3d Cir. 2016) (affirming enhancement because the defendant controlled the activities at each location, ensured that his employees were at the house working, oversaw the financial management of both locations, and directed individuals to pay the rent).

U.S. v. Clark, 665 F. App’x 298 (4th Cir. 2016) (unpublished) (affirming enhancement where even though defendant did not own apartment, she regularly stayed there, she was integral to rampant drug activity at the apartment as she occupied it with full knowledge of the drugs, money, and firearms stored there).

U.S. v. Guzman-Reyes, 853 F.3d 260 (5th Cir. 2017) (affirming enhancement even though defendant’s name was not on a formal lease agreement as defendant had unrestricted access to the premises and maintained a physical storage space in exchange for a monthly payment).

U.S. v. Romans, 823 F.3d 299 (5th Cir. 2016) (affirming enhancement based on the following factors: defendant’s primary use of the body shop was to receive and distribute large quantities of marijuana; he had no role in the legitimate operations of the shop; and at his direction boxes of marijuana were taken to there for delivery to his customers).

U.S. v. Snelson, --F. App’x--, 2017 WL 1488242 (5th Cir. 2017) (unpublished) (affirming enhancement because defendant would sell methamphetamine from various motel rooms, which he leased for up to a week at a time, all for the purpose of distributing drugs).

U.S. v. Winfield, 846 F.3d 241 (7th Cir. 2017) (affirming enhancement even though the defendant used the apartment as a place to live because the record showed that the police seized drugs from the garage, defendant flushed drugs down the toilet when the police approached, an informant bought drugs from the defendant in the apartment four times and spotted additional drugs at each sale. The court added: “nothing in the text of §2D1.1(b)(12) or its application note requires a sentencing court to find that the defendant stored multiple kilograms of drugs over an extended period of time; rather, the court needs to find that a drug-related activity was just one of the defendant’s “primary or principal” uses for the premises—as opposed to an “incidental or collateral” (See also, *U.S. v. Thomas*, 845 F.3d 824 (7th Cir. 2017)).

§ 2K2.1 - Unlawful Receipt/Possession/Transportation of Firearms or Ammunition §2D1.1 - Unlawful Manufacturing, Importing, Exporting, or Trafficking

2017
National
Seminar

U.S. v. Evans, 826 F.3d 934 (7th Cir. 2016) (affirming enhancement even though defendant used the apartment as a residence because drug activity need not be the exclusive use of the premises for the upward adjustment to apply. “[A] premise can have more than one primary use (drug distribution and residence), and, as long as it is more than ‘incidental or collateral,’ drug distribution does not have to be the ‘sole purpose.’” That drugs were stashed in the apartment shows “storage of a controlled substance for the purpose of distribution.”).

U.S. v. Job, 851 F.3d 889 (9th Cir. 2017) (reversing enhancement because the PSR indicated only that methamphetamine had been stored in defendant’s kitchen and living room, and there was no evidence at trial or at sentencing that the defendant ever distributed methamphetamine out of his home. The government had not met its burden to prove that the defendant maintained the premises for the primary purpose of manufacturing or distributing methamphetamine).

U.S. v. Marius, --F. App’x--, 2017 WL 473841 (11th Cir. 2017) (unpublished) (affirming enhancement where defendant admitted he sold drugs from house, controlled drugs available for sale at the house, and referred to the house as his “crib”).

To receive updates on future events and other Commission activities, visit us on Twitter, or subscribe to e-mail updates through our website at www.ussc.gov. For guidelines questions, call our Helpline at 202.502.4545, and to request training, email us at training@ussc.gov



The United States Sentencing Commission, an independent agency in the judicial branch of the federal government, was organized in 1985 to develop a national sentencing policy for the federal courts. The resulting sentencing guidelines provide structure for the courts’ sentencing discretion to help ensure that similar offenders who commit similar offenses receive similar sentences.